

PART III

INVESTMENT, SERVICES AND RELATED MATTERS

CHAPTER 10

INVESTMENT

Section A - Definitions

Article 10.1: Definitions

For purposes of this Chapter:

disputing investor means an investor that makes a claim under Section C;

disputing parties means the disputing investor and the disputing Party;

disputing Party means a Party against which a claim is made under Section C;

disputing party means the disputing investor or the disputing Party;

enterprise means an "enterprise" as defined in Article 2.1, and a branch of an enterprise;

enterprise of a Party means an enterprise constituted or organized under the law of a Party and a branch, located in the territory of a Party and carrying out business activities there;

financial institution means any natural person or enterprise of a Party wishing to supply or supplying financial services under the law of the Party in whose territory it is located;

G7 currency means the currency of Canada, France, Germany, Italy, Japan, the United Kingdom of Great Britain and Northern Ireland or the United States of America;

ICSID means the International Center for Settlement of Investment Disputes;

ICSID Convention means the Convention on the Settlement of Investment Disputes between States and Nationals of other States, done at Washington, March 18, 1965;

investment means every kind of asset that an investor owns or controls, directly or indirectly, and that has the characteristics of an investment, such as the commitment of capital or other resources, the expectation of gains or profits and the assumption of risk. Forms that an investment may take include, but are not limited to:

- (a) an enterprise;
- (b) shares, stocks, and other forms of equity participation in an enterprise;
- (c) bonds, debentures, loans, and other debt instruments of an enterprise;

- (d) rights under contracts, including turnkey, construction, management, production, concession or revenue-sharing contracts;
- (e) claims to money established and maintained in connection with the conduct of commercial activities;
- (f) intellectual property rights;
- (g) rights conferred pursuant to domestic law or contract such as concessions, licenses, authorizations and permits, except for those that do not create any rights protected by domestic law; and
- (h) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens and pledges;

but **investment** does not mean,

- (i) claims to money that arise solely from:
 - (i) commercial contracts for the sale of goods or services by a national or enterprise in the territory of a Party to an enterprise in the territory of the other Party; or
 - (ii) the extension of credit in connection with a commercial transaction, such as trade financing; and
- (j) an order entered in a judicial or administrative action.

investment of an investor of a Party means an investment owned or controlled, directly or indirectly, by an investor of such a Party;

investor of a Party means a Party or state enterprise thereof, or a national or an enterprise of such a Party, that makes a juridical act in the territory of the other Party, towards materializing an investment within it, that submits capital or, when applicable, is making or has made an investment;

investor of a non-Party means an investor other than an investor of a Party;

New York Convention means the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done in New York on June 10, 1958;

Secretary-General means the Secretary-General of ICSID;

transfers means transfers and international payments;

Tribunal means an arbitration tribunal established under Article 10.24 or 10.30;

TRIMS Agreement means Agreement on Trade-Related Investment Measures, which is part of the WTO Agreement; and

UNCITRAL Arbitration Rules means the arbitration rules of the United Nations Commission on International Trade Law, approved by the United Nations General Assembly on December 15, 1976.

Section B - Investment

Article 10.2: Scope and Coverage

1. This Chapter applies to measures adopted or maintained by a Party relating to:
 - (a) investors of the other Party;
 - (b) investments of investors of the other Party in the territory of the Party; and
 - (c) with respect to Articles 10.7 and 10.18, all investments in the territory of the Party.
2. This Chapter applies to the existing investments at the date of the entry into force of this Agreement, as well as to the investments made or acquired after this date.
3. This Chapter does not apply to:
 - (a) measures adopted or maintained by a Party relating to investors of the other Party, and investments of such investors, in financial institutions in the Party's territory; and
 - (b) claims arising out of events which occurred, or claims which had been raised, prior to the entry into force of this Agreement.
4. Nothing in this Chapter shall be construed to prevent a Party from providing a service or performing a function such as law enforcement, correctional services, income security or insurance, social security or insurance, social welfare, public education, public training, health and child care.
5. Notwithstanding paragraph 4, if services provided in the exercise of governmental authority are provided in the territory of a Party such as law enforcement, correctional services, income security or insurance, social security or insurance, social welfare, public education, public training, health, and child care on a commercial basis or in competition with one or more service providers, those services are covered by the provisions of this Chapter.

Article 10.3: National Treatment

1. Each Party shall accord to investors of the other Party treatment no less favourable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.
2. Each Party shall accord to investments of investors of the other Party treatment no less favourable than that it accords, in like circumstances, to investments of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

Article 10.4: Most-Favoured-Nation Treatment

1. Each Party shall accord to investments of investors of the other Party made or materialized in accordance with the laws and regulations of the other Party, and investors of the other Party who have made or materialized such investments, treatment no less favorable than it accords, in like circumstances, to investments made or materialized by investors of any non-Party or investors of such investments.
2. If a Party accords more favorable treatment to investments of investors of a non-Party or investors of a non-Party by an agreement establishing, *inter alia*, a free trade area, a customs union, a common market, an economic union or any other form of regional economic organization to which the Party is a member, it shall not be obliged to accord such treatment to investments of the investors of the other Party or the investors of the other Party.
3. Notwithstanding paragraph 2, if a Party makes any further liberalization, in conformity with Articles 10.9.1 and 10.9.2 by an agreement with a non-Party, it shall afford adequate opportunity to the other Party to negotiate treatment granted therein on a mutually advantageous basis with a view to securing an overall balance of rights and obligations.

Article 10.5: Minimum Standard of Treatment

1. Each Party shall accord to investments of investors of the other Party treatment in accordance with the customary international law minimum standard of treatment of aliens, including fair and equitable treatment and full protection and security.
2. The concepts of “fair and equitable treatment” and “full protection and security” in paragraph 1 do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens.
3. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.

Article 10.6: Losses and Compensation

Investors of a Party whose investments suffer losses owing to war or other armed conflict, a state of national emergency, revolt, insurrection, riot or other similar situations, and such losses as ones resulting from requisition or destruction of property, which was not caused in combat action or was not required by the necessity of the situation, in the territory of the other Party, shall be accorded by the latter Party treatment, as regards restitution, indemnification, compensation or other forms of settlement, no less favorable than that which the latter Party accords to its own investors or to investors of any non-Party, whichever is more favourable to the investors concerned.

Article 10.7: Performance Requirements

1. Neither Party may impose or enforce any of the following requirements, or enforce any commitment or undertaking, in connection with the establishment, acquisition, expansion, management, conduct or operation of an investment of an investor of a Party or of a non-Party in its territory:

- (a) to export a given level or percentage of goods or services;
- (b) to achieve a given level or percentage of domestic content;
- (c) to purchase, use or accord a preference to goods produced or services provided in its territory, or to purchase goods or services from persons in its territory;
- (d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment;
- (e) to restrict sales of goods or services in its territory that such investment produces or provides by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;
- (f) to transfer technology, a production process or other proprietary knowledge to a person in its territory, except when the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal or competition authority to remedy an alleged violation of competition law or to act in a manner not inconsistent with other provisions of this Agreement; or
- (g) to act as the exclusive supplier of the goods it produces or services it provides to a specific region or world market.

2. A measure that requires an investment to use a technology to meet generally applicable health, safety or environmental requirements shall not be construed to be inconsistent with subparagraph 1(f). For greater certainty, Articles 10.3 and 10.4 apply to the measure.

3. Neither Party may condition the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of a Party or of a non-Party, in compliance with any of the following requirements:

- (a) to achieve a given level or percentage of domestic content;
- (b) to purchase, use or accord a preference to goods produced in its territory, or to purchase goods from producers in its territory;
- (c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment; or
- (d) to restrict sales of goods or services in its territory that such investment produces or provides by relating such sales in any way to the volume or value of its exports or foreign exchange earnings.

4. Nothing in paragraph 3 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of a Party or of a non-Party, in compliance with a requirement to locate production, provide a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory. In the event of any inconsistency between this paragraph and the TRIMS Agreement, the latter shall prevail to the extent of the inconsistency.

5. Paragraphs 1 and 3 do not apply to any requirement other than the requirements set out in those paragraphs.

6. Provided that such measures are not applied in an arbitrary or unjustifiable manner, or do not constitute a disguised restriction on international trade or investment, nothing in subparagraphs 1(b) or (c) or 3(a) or (b) shall be construed to prevent a Party from adopting or maintaining measures, including environmental measures:

- (a) necessary to secure compliance with laws and regulations that are not inconsistent with the provisions of this Agreement;
- (b) necessary to protect human, animal or plant life or health; or
- (c) necessary for the conservation of living or non-living exhaustible natural resources.

7. The provisions of:

- (a) subparagraphs 1(a), (b) and (c), and 3(a) and (b) shall not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programs;
- (b) subparagraphs 1(b), (c), (f) and (g), and 3(a) and (b) shall not apply to procurement by a Party or a state enterprise; and
- (c) subparagraphs 3(a) and (b) shall not apply to requirements imposed by the importing Party relating to the content of goods necessary to qualify for preferential tariff or preferential quotas.

8. This Article does not preclude the application of any commitment, obligation or requisite between private parties.

Article 10.8: Senior Management and Boards of Directors

1. Neither Party may require that an enterprise of a Party that is an investment of an investor of the other Party appoint to senior management positions individuals of any particular nationality.

2. A Party may require that a majority of the board of directors, or any committee thereof, of an enterprise of that Party that is an investment of an investor of the other Party, be of a particular nationality, or resident in the territory of the Party, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.

Article 10.9: Reservations and Exceptions

1. Articles 10.3, 10.7 and 10.8 shall not apply to:

- (a) any existing nonconforming measure that is maintained by:
 - (i) a Party at the national level, as set out in its Schedule to Annex I; or
 - (ii) a local government;
- (b) the continuation or prompt renewal of any nonconforming measure referred to in subparagraph (a); or

- (c) an amendment to any nonconforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 10.3, 10.7 and 10.8.
- 2. Articles 10.3, 10.7 and 10.8 shall not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors or activities, as set out in its Schedule to Annex II.
- 3. Neither Party shall, under any measure adopted after the date of entry into force of this Agreement and covered by its Schedule to Annex II, require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.
- 4. Nothing in this Chapter shall be construed so as to derogate from rights and obligations under international agreements in respect of protection of intellectual property rights to which both Parties are party, including TRIPS Agreement and other treaties concluded under the auspices of the World Intellectual Property Organization.
- 5. Articles 10.3 and 10.8 shall not apply to:
 - (a) procurement by a Party or a state enterprise; or
 - (b) subsidies or grants provided by a Party or a state enterprise, including government-supported loans, guarantees and insurance.
- 6. Articles 10.3, 10.7 and 10.8 shall not apply to any voluntary and special investment regime, as is established in Annex 10.9.6.

Article 10.10: Future Liberalization

Through future negotiations, to be scheduled every two years by the Commission after the date of entry into force of this Agreement, the Parties will engage in further liberalisation with a view to reaching the reduction or elimination of the remaining restrictions scheduled in conformity with paragraphs 1 and 2 of Article 10.9 on a mutually advantageous basis and securing an overall balance of rights and obligations.

Article 10.11: Transfers

- 1. Except as provided in Annex 10.11, each Party shall permit all transfers relating to an investment of an investor of the other Party in the territory of the Party to be made freely and without delay. Such transfers include:
 - (a) the initial capital and additional amount to maintain or increase an investment;
 - (b) profits, dividends, interest, capital gains, royalty payments, management fees, technical assistance and other fees, returns in kind and other amounts derived from the investment;
 - (c) proceeds from the sale of all or any part of the investment or from the partial or complete liquidation of the investment;

- (d) payments made under a contract entered into by the investor, or its investment, including payments made pursuant to a loan agreement;
 - (e) payments made pursuant to Article 10.13; and
 - (f) payments arising under Section C.
2. Each Party shall permit transfers to be made in a freely usable or convertible currency at the market rate of exchange prevailing on the date of transfer.
3. Neither Party may require its investors to transfer, or penalize its investors that fail to transfer, the income, earnings, profits or other amounts derived from, or attributable to, investments in the territory of the other Party.
4. Notwithstanding paragraphs 1 and 2, a Party may prevent a transfer through the equitable, non-discriminatory and good faith application of its laws relating to:
- (a) bankruptcy, insolvency or the protection of the rights of creditors;
 - (b) issuing, trading or dealing in securities;
 - (c) criminal or penal offenses;
 - (d) reports of transfers of currency or other monetary instruments; or
 - (e) ensuring the satisfaction of judgments in adjudicatory proceedings.
5. Paragraph 3 shall not be construed to prevent a Party from imposing any measure through the equitable, non-discriminatory and good faith application of its laws relating to the matters set out in subparagraphs (a) through (e) of paragraph 4.
6. Notwithstanding paragraph 1, a Party may restrict transfers of returns in kind in circumstances where it could otherwise restrict such transfers under this Agreement, including as set out in paragraph 4.

Article 10.12: Exceptions and Safeguard Measures

1. Where, in exceptional circumstances, payments and capital movements between the Parties cause or threaten to cause serious difficulties for the operation of monetary policy or exchange rate policy in either Party, the Party concerned may take safeguard measures with regard to capital movements that are strictly necessary for a period not exceeding one year. The application of safeguard measures may be extended through their formal reintroduction.
2. The Party adopting the safeguard measures shall inform the other Party forthwith and present, as soon as possible, a time schedule for their removal.

Article 10.13: Expropriation and Compensation

1. Neither Party may, directly or indirectly, nationalize or expropriate an investment of an investor of the other Party in its territory, except:
- (a) for a public purpose;
 - (b) on a non-discriminatory basis;

- (c) in accordance with due process of law and Article 10.5(1); and
- (d) on payment of compensation in accordance with paragraphs 2 through 6.

2. Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place ("date of expropriation"), and shall not reflect any change in value occurring because the intended expropriation had become known earlier. Valuation criteria shall include going concern value, asset value including declared tax value of tangible property, and other criteria, as appropriate, to determine fair market value.

3. Compensation shall be paid without delay and be fully realizable.

4. If payment is made in a G7 currency, compensation shall include interest at a commercially reasonable rate for that currency from the date of expropriation until the date of actual payment.

5. If a Party elects to pay in a currency other than a G7 currency, the amount paid on the date of payment, if converted into a G7 currency at the market rate of exchange prevailing on that date, shall be no less than that if the amount of compensation owed on the date of expropriation had been converted into that G7 currency at the market rate of exchange prevailing on that date, and interest had accrued at a commercially reasonable rate for that G7 currency from the date of expropriation until the date of payment.

6. On payment, compensation shall be freely transferable as provided in Article 10.11.

7. This Article does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights, or to the revocation, limitation or creation of intellectual property rights, to the extent that such issuance, revocation, limitation or creation is consistent with the TRIPS Agreement.

Article 10.14: Subrogation

1. Where a Party or an agency authorized by that Party has granted a contract of insurance or any form of financial guarantee against non-commercial risks with regard to an investment by one of its investors in the territory of the other Party and when payment has been made under this contract or financial guarantee by the former Party or the agency authorized by it, the latter Party shall recognize the rights of the former Party or the agency authorized by the Party by virtue of the principle of subrogation to the rights of the investor.

2. Where a Party or the agency authorized by the Party has made a payment to its investor and has taken over rights and claims of the investor, that investor shall not, unless authorized to act on behalf of the Party making the payment, pursue those rights and claims against the other Party.

Article 10.15: Special Formalities and Information Requirements

1. Nothing in Article 10.3 shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with the establishment of investments by investors of the other Party, such as the requirement that investments be legally constituted under the laws or regulations of the Party, provided that such formalities do not materially impair the protections afforded by a Party to investors of the other Party and investments of investors of the other Party pursuant to this Chapter.

2. Notwithstanding Article 10.3 or 10.4, a Party may require an investor of the other Party, or its investment in its territory, to provide routine information concerning that investment solely for informational or statistical purposes. The Party shall protect such business information that is confidential from any disclosure that would prejudice the competitive position of the investor or the investment. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

Article 10.16: Relation to Other Chapters

1. In the event of any inconsistency between this Chapter and another Chapter in this Agreement, the other Chapter shall prevail to the extent of the inconsistency.

2. The requirement by a Party that a service provider of the other Party post a bond or other form of financial security as a condition of providing a service into its territory does not of itself make this Chapter applicable to the provision of that cross-border service. This Chapter applies to that Party's treatment of the posted bond or financial security.

Article 10.17: Denial of Benefits

1. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of such Party and to investments of such investor, if investors of a non-Party own or control the enterprise and the denying Party:

- (a) does not maintain diplomatic relations with the non-Party; or
- (b) adopts or maintains measures with respect to the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to its investments.

2. Subject to prior notification and consultation in accordance with Articles 17.4 and 19.4, a Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of such Party and to investments of such investors if investors of a non-Party own or control the enterprise and the enterprise has no substantial business activities in the territory of the Party under whose law it is constituted or organized.

Article 10.18: Environmental Measures

1. Nothing in this Chapter shall be construed to prevent a Party from adopting, maintaining or enforcing any measure otherwise consistent with this Chapter that it considers appropriate to ensure that an investment activity in its territory is undertaken in a manner sensitive to environmental concerns.
2. The Parties recognize that it is inappropriate to encourage investment by relaxing domestic health, safety or environmental measures. Accordingly, a Party should not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such measures as an encouragement for the establishment, acquisition, expansion or retention in its territory of an investment of an investor. If a Party considers that the other Party has offered such an encouragement, it may request consultations with the other Party and the Parties shall consult with a view to avoiding any such encouragement.

Section C - Settlement of Disputes between a Party and an Investor of the Other Party

Article 10.19: Purpose

Without prejudice to the rights and obligations of the Parties under Chapter 19, this Section establishes a mechanism for the settlement of investment disputes that assures both equal treatment among investors of the Parties in accordance with the principle of international reciprocity and due process before an impartial tribunal.

Article 10.20: Claim by an Investor of a Party on Its Own Behalf

1. Subject to Annex 10.20, an investor of a Party may submit to arbitration under this Section a claim that the other Party has breached an obligation under Section B or Article 14.8, and that the investor has incurred loss or damage by reason of, or arising out of, that breach.
2. An investor may not make a claim if more than three years have elapsed from the date on which the investor first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the investor has incurred loss or damage.

Article 10.21: Claim by an Investor of a Party on Behalf of an Enterprise

1. Subject to Annex 10.20, an investor of a Party, on behalf of an enterprise of the other Party that is a juridical person that the investor owns or controls, directly or indirectly, may submit to arbitration under this Section a claim that the other Party has breached an obligation under Section B or Article 14.8, and that the enterprise has incurred loss or damage by reason of, or arising out of, that breach.

2. An investor may not make a claim on behalf of an enterprise described in paragraph 1 if more than three years have elapsed from the date on which the enterprise first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the enterprise has incurred loss or damage.

3. Where an investor makes a claim under this Article and the investor or a non-controlling investor in the enterprise makes a claim under Article 10.20 arising out of the same events that gave rise to the claim under this Article, and two or more of the claims are submitted to arbitration under Article 10.24, the claims should be heard together by a Tribunal established under Article 10.30, unless the Tribunal finds that the interests of a disputing party would be prejudiced thereby.

4. An investment may not make a claim under this Section.

Article 10.22: Settlement of a Claim through Consultation and Negotiation

The disputing parties should first attempt to settle a claim through consultation or negotiation.

Article 10.23: Notice of Intent to Submit a Claim to Arbitration

The disputing investor shall deliver to the disputing Party written notice of its intention to submit a claim to arbitration at least 90 days before the claim is submitted, which notice shall specify:

- (a) the name and address of the disputing investor and, where a claim is made under Article 10.21, the name and address of the enterprise;
- (b) the provisions of this Agreement alleged to have been breached and any other relevant provisions;
- (c) the issues and the factual basis for the claim; and
- (d) the relief sought and the approximate amount of damages claimed.

Article 10.24: Submission of a Claim to Arbitration

1. Provided that six months have elapsed since the events giving rise to a claim, a disputing investor may submit the claim to arbitration under:

- (a) the ICSID Convention, provided that both the disputing Party and the Party of the investor are parties to the Convention;
- (b) the Additional Facility Rules of ICSID, provided that either the disputing Party or the Party of the investor, but not both, is a party to the ICSID Convention; or
- (c) the UNCITRAL Arbitration Rules.

2. The applicable arbitration rules shall govern the arbitration except to the extent modified by this Section.

Article 10.25: Conditions Precedent to Submission of a Claim to Arbitration

1. A disputing investor may submit a claim under Article 10.20 to arbitration only if:
 - (a) the investor and the enterprise, that is a juridical person that the investor owns or controls, directly or indirectly, have not submitted the same claim before any administrative tribunal or court of the disputing Party;
 - (b) the investor consents to arbitration in accordance with the procedures set out in this Agreement; and
 - (c) the investor and, where the claim is for loss or damage to an interest in an enterprise of the other Party that is a juridical person that the investor owns or controls, directly or indirectly, the enterprise, waive their right to initiate before any administrative tribunal or court under the law of a Party, or other dispute settlement procedures, any proceedings with respect to the measure of the disputing Party that is alleged to be a breach referred to in Article 10.20, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of the disputing Party.
2. A disputing investor may submit a claim under Article 10.21 to arbitration only if:
 - (a) both the investor and the enterprise that is a juridical person that the investor owns or controls, directly or indirectly, have not submitted the same claim before any administrative tribunal or court of the disputing Party;
 - (b) both the investor and the enterprise consent to arbitration in accordance with the procedures set out in this Agreement; and
 - (c) both the investor and the enterprise waive their rights to initiate before any administrative tribunal or court under the law of a Party, or other dispute settlement procedures, any proceedings with respect to the measure of the disputing Party that is alleged to be a breach referred to in Article 10.21, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of the disputing Party.
3. Once a disputing investor concerned submits the dispute for resolution before any administrative tribunal or court under the law of a Party, the investor may not thereafter allege the measure to be such a breach referred to in Article 10.20 or 10.21 in an arbitration under this Section.
4. A consent and waiver required by this Article shall be in writing, shall be delivered to the disputing Party and shall be included in the submission of a claim to arbitration.
5. Only where a disputing Party has deprived a disputing investor of control of an enterprise:
 - (a) a waiver from the enterprise under subparagraph 1(c) or 2(c) shall not be required; and
 - (b) Article 10.24.1(b) shall not be applicable.

Article 10.26: Consent to Arbitration

1. Each Party consents to the submission of a claim to arbitration in accordance with the procedures set out in this Agreement.
2. The consent given under paragraph 1 and the submission by a disputing investor of a claim to arbitration shall satisfy the requirements of:
 - (a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the Additional Facility Rules for written consent of the parties; and
 - (b) Article II of the New York Convention for an agreement in writing.

Article 10.27: Number of Arbitrators and Method of Appointment

Except in respect of a Tribunal established under Article 10.30, and unless the disputing parties otherwise agree, the Tribunal shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement between the disputing parties.

Article 10.28: Constitution of a Tribunal When a Party Fails to Appoint an Arbitrator or the Disputing Parties are Unable to Agree on a Presiding Arbitrator

1. The Secretary-General shall serve as appointing authority for an arbitration under this Section.
2. If a Tribunal, other than a Tribunal established under Article 10.30, has not been constituted within 90 days from the date that a claim is submitted to arbitration, the Secretary-General, on the request of either disputing party, shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed, except that the presiding arbitrator shall be appointed in accordance with paragraph 3.
3. The Secretary-General shall appoint the presiding arbitrator from the roster of presiding arbitrators referred to in paragraph 4, provided that the presiding arbitrator shall not be a national of the disputing Party or a national of the Party of the disputing investor. In the event that no such presiding arbitrator is available to serve, the Secretary-General shall appoint, from the ICSID Panel of Arbitrators, a presiding arbitrator who is not a national of either of the Parties.
4. On the date of entry into force of this Agreement, the Parties shall establish, and thereafter maintain, a roster of 30 presiding arbitrators, none of whom may be a national of a Party, meeting the qualifications of the Convention and rules referred to in Article 10.24 and experienced in international law and investment matters. The roster members shall be appointed by mutual agreement.

Article 10.29: Agreement to Appointment of Arbitrators

For purposes of Article 39 of the ICSID Convention and Article 7 of Schedule C to the ICSID Additional Facility Rules, and without prejudice to an objection to an arbitrator based on Article 10.28.3 or on a ground other than nationality:

- (a) the disputing Party agrees to the appointment of each individual member of a Tribunal established under the ICSID Convention or the ICSID Additional Facility Rules;
- (b) a disputing investor referred to in Article 10.20 may submit a claim to arbitration, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the disputing investor agrees in writing to the appointment of each individual member of the Tribunal; and
- (c) a disputing investor referred to in Article 10.21.1 may submit a claim to arbitration, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the disputing investor and the enterprise agree in writing to the appointment of each individual member of the Tribunal.

Article 10.30: Consolidation

1. A Tribunal established under this Article shall be established under the UNCITRAL Arbitration Rules and shall conduct its proceedings in accordance with those Rules, except as modified by this Section.

2. Where a Tribunal established under this Article is satisfied that claims have been submitted to arbitration under Article 10.24 that have a question of law or fact in common, the Tribunal may, in the interests of fair and efficient resolution of the claims, and after hearing the disputing parties, by order:

- (a) assume jurisdiction over, and hear and determine together, all or part of the claims; or
- (b) assume jurisdiction over, and hear and determine one or more of the claims, the determination of which it believes would assist in the resolution of the others.

3. A disputing party that seeks an order under paragraph 2 shall request the Secretary-General to establish a Tribunal and shall specify in the request:

- (a) the name of the disputing Party or disputing investors against which the order is sought;
- (b) the nature of the order sought; and
- (c) the grounds on which the order is sought.

4. The disputing party shall deliver to the disputing Party or disputing investors against which the order is sought a copy of the request.

5. Within 60 days of receipt of the request, the Secretary-General shall establish a Tribunal comprising three arbitrators. The Secretary-General shall appoint the presiding arbitrator from the roster referred to in paragraph 4 of Article 10.28. In the event that no such presiding arbitrator is available to serve, the Secretary-General shall appoint, from the ICSID Panel of

Arbitrators, a presiding arbitrator who is not a national of either Party. The Secretary-General shall appoint the two other members from the roster referred to in paragraph 4 of Article 10.28 and to the extent not available from that roster, from the ICSID Panel of Arbitrators, and to the extent not available from that Panel, in the discretion of the Secretary-General. One member shall be a national of the disputing Party and one member shall be a national of the Party of the disputing investors.

6. Where a Tribunal has been established under this Article, a disputing investor that has submitted a claim to arbitration under Article 10.20 or 10.21 and that has not been named in a request made under paragraph 3 may make a written request to the Tribunal that it be included in an order made under paragraph 2, and shall specify in the request:

- (a) the name and address of the disputing investor;
- (b) the nature of the order sought; and
- (c) the grounds on which the order is sought.

7. A disputing investor referred to in paragraph 6 shall deliver a copy of its request to the disputing parties named in a request made under paragraph 3.

8. A Tribunal established under Article 10.24 shall not have jurisdiction to decide a claim, or a part of a claim, over which a Tribunal established under this Article has assumed jurisdiction.

9. On application of a disputing party, a Tribunal established under this Article, pending its decision under paragraph 2, may order that the proceedings of a Tribunal established under Article 10.24 be stayed, unless the latter Tribunal has already adjourned its proceedings.

Article 10.31: Notice

1. A disputing Party shall deliver to the Secretariat, within 15 days of receipt by the disputing Party, a copy of:

- (a) a request for arbitration made under paragraph (1) of Article 36 of the ICSID Convention;
- (b) a notice of arbitration made under Article 2 of Schedule C of the ICSID Additional Facility Rules; or
- (c) a notice of arbitration given under the UNCITRAL Arbitration Rules.

2. A disputing Party shall deliver to the Secretariat a copy of a request made under paragraph 3 of Article 10.30:

- (a) within 15 days of receipt of the request, in the case of a request made by a disputing investor; or
- (b) within 15 days of making the request, in the case of a request made by the disputing Party.

3. A disputing Party shall deliver to the Secretariat a copy of a request made under paragraph 6 of Article 10.30 within 15 days of receipt of the request.

4. The Secretariat shall maintain a public register of the documents referred to in paragraphs 1, 2 and 3.

5. A disputing Party shall deliver to the other Party:
 - (a) written notice of a claim that has been submitted to arbitration no later than 30 days after the date that the claim is submitted; and
 - (b) copies of all pleadings filed in the arbitration.

Article 10.32: Participation by a Party

Upon written notice to the disputing parties, a Party may make submissions to a Tribunal on a question of interpretation of this Agreement.

Article 10.33: Documents

1. A Party shall be entitled to receive from the disputing Party, at the cost of the requesting Party, a copy of:
 - (a) the evidence that has been tendered to the Tribunal; and
 - (b) the written argument of the disputing parties.
2. A Party receiving information pursuant to paragraph 1 shall treat the information as if it were a disputing Party.

Article 10.34: Place of Arbitration

Unless the disputing parties agree otherwise, a Tribunal shall hold an arbitration in the territory of a Party that is party to the New York Convention, selected in accordance with:

- (a) the ICSID Additional Facility Rules if the arbitration is under those Rules or the ICSID Convention; or
- (b) the UNCITRAL Arbitration Rules if the arbitration is under those Rules.

Article 10.35: Governing Law

1. A Tribunal established under this Section shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law.
2. An interpretation by the Commission of a provision of this Agreement shall be binding on a Tribunal established under this Section.

Article 10.36: Interpretation of Annexes

1. Where a disputing Party asserts as a defense that the measure alleged to be a breach is within the scope of a reservation or exception set out in Annex I or Annex II, upon request of the disputing Party, the Tribunal shall request the interpretation of the Commission on the issue. The

Commission, within 60 days of delivery of the request, shall submit in writing its interpretation to the Tribunal.

2. Further to paragraph 2 of Article 10.35, a Commission interpretation submitted under paragraph 1 shall be binding on the Tribunal. If the Commission fails to submit an interpretation within 60 days, the Tribunal shall decide the issue.

Article 10.37: Expert Reports

Without prejudice to the appointment of other kinds of experts where authorized by the applicable arbitration rules, a Tribunal, at the request of a disputing party or, unless the disputing parties disapprove, on its own initiative, may appoint one or more experts to report to it in writing on any factual issue concerning environmental, health, safety or other scientific matters raised by a disputing party in a proceeding, subject to such terms and conditions as the disputing parties may agree.

Article 10.38: Interim Measures of Protection

A Tribunal may order an interim measure of protection to preserve the rights of a disputing party, or to ensure that the Tribunal's jurisdiction is made fully effective, including an order to preserve evidence in the possession or control of a disputing party or to protect the Tribunal's jurisdiction. A Tribunal may not order attachment or enjoin the application of the measure alleged to constitute a breach referred to in Article 10.20 or 10.21. For purposes of this paragraph, an order includes a recommendation.

Article 10.39: Final Award

1. Where a Tribunal makes a final award against a Party, the Tribunal may award, separately or in combination, only:
 - (a) monetary damages and any applicable interest; and
 - (b) restitution of property, in which case the award shall provide that the disputing Party may pay monetary damages and any applicable interest in lieu of restitution.
2. A Tribunal may also award costs in accordance with the applicable arbitration rules.
3. Subject to paragraphs 1 and 2, where a claim is made under Article 10.21.1:
 - (a) an award of restitution of property shall provide that restitution be made to the enterprise;
 - (b) an award of monetary damages and any applicable interest shall provide that the sum be paid to the enterprise; and
 - (c) the award shall provide that it is made without prejudice to any right that any person may have in the relief under applicable domestic law.
4. A Tribunal may not order a Party to pay punitive damages.

Article 10.40: Finality and Enforcement of an Award

1. An award made by a Tribunal shall have no binding force except between the disputing parties and in respect of the particular case.
2. Subject to paragraph 3 and the applicable review procedure for an interim award, a disputing party shall abide by and comply with an award without delay.
3. A disputing party may not seek enforcement of a final award until:
 - (a) in the case of a final award made under the ICSID Convention:
 - (i) 120 days have elapsed from the date the award was rendered and no disputing party has requested revision or annulment of the award; or
 - (ii) revision or annulment proceedings have been completed; and
 - (b) in the case of a final award under the ICSID Additional Facility Rules or the UNCITRAL Arbitration Rules:
 - (i) three months have elapsed from the date the award was rendered and no disputing party has commenced a proceeding to revise, set aside or annul the award; or
 - (ii) a court has dismissed or allowed an application to revise, set aside or annul the award and there is no further appeal.
4. Each Party shall provide for the enforcement of an award in its territory.
5. If a disputing Party fails to abide by or comply with a final award, the Commission, on delivery of a request by a Party whose investor was a party to the arbitration, shall establish a panel under Article 19.6. The requesting Party may seek in such proceedings:
 - (a) a determination that the failure to abide by or comply with the final award is inconsistent with the obligations of this Agreement; and
 - (b) a recommendation that the Party abide by or comply with the final award.
6. A disputing investor may seek enforcement of an arbitration award under the ICSID Convention or the New York Convention regardless of whether proceedings have been taken under paragraph 5.
7. A claim that is submitted to arbitration under this Section shall be considered to arise out of a commercial relationship or transaction for purposes of Article I of the New York Convention.

Article 10.41: General Provision

Time when a Claim is Submitted to Arbitration

1. A claim is submitted to arbitration under this Section when:
 - (a) the request for arbitration under paragraph 1 of Article 36 of the ICSID Convention has been received by the Secretary-General;

- (b) the notice of arbitration under Article 2 of Schedule C of the ICSID Additional Facility Rules has been received by the Secretary-General; or
- (c) the notice of arbitration given under the UNCITRAL Arbitration Rules is received by the disputing Party.

Service of Documents

2. Delivery of notice and other documents on a Party shall be made to the place named for that Party in Annex 10.41.2.

Receipts under Insurance or Guarantee Contracts

3. In an arbitration under this Section, a Party shall not assert, as a defense, counterclaim, right of setoff or otherwise, that the disputing investor has received or will receive, pursuant to an insurance or guarantee contract, indemnification or other compensation for all or part of its alleged damages.

Publication of an Award

4. Annex 10.41.4 applies to the Parties specified in that Annex with respect to publication of an award.

Article 10.42: Exclusions

Without prejudice to the applicability or non-applicability of the dispute settlement provisions of this Section or of Chapter 19 to other actions taken by a Party pursuant to Article 20.2, a decision by a Party to prohibit or restrict the acquisition of an investment in its territory by an investor of the other Party, or investment of such an investor, pursuant to that Article shall not be subject to such provisions.

Section D - Investment and Cross-Border Trade in Services Committee

Article 10.43: Investment and Cross-Border Trade in Services Committee

1. The Parties hereby establish an Investment and Cross-Border Trade in Services Committee, comprising representatives of each Party, in accordance with Annex 10.43.
2. The Committee shall meet at least once a year, or in any time at request of a Party or the Commission.
3. The Committee shall perform, *inter alia*, the following functions:
 - (a) to overlook the execution and administration of this Chapter and Chapter 11;

- (b) to discuss the subjects of bilateral interest regarding investment and cross-border services; and
- (c) to examine subjects related to investment and cross-border services, which are being discussed at other international fora.

Annex 10.9.6

1. Decree Law 600 (1974), the Foreign Investment Statute, is a voluntary and special investment regime for Chile.
2. As an alternative to the common regime for the entry of capital into Chile, potential investors may apply to the Foreign Investment Committee to be subject to the regime set out in Decree Law 600.
3. The obligations and commitments contained in this Chapter, do not apply to Decree Law 600, Foreign Investment Statute, to Law 18.657 Foreign Capital Investment Fund Law, to the continuation or prompt renewal of such laws, to amendments to those laws or to any special and/or voluntary investment regime that may be adopted in the future by Chile.
4. For greater certainty, it is understood that the Foreign Investment Committee of Chile has the right to reject applications to invest through Decree Law 600 and Law 18.657. Additionally, the Foreign Investment Committee has the right to regulate the terms and conditions of foreign investment under Decree Law 600 and Law 18.657.

Annex 10.11

With respect to its obligations under Article 10.11, Chile reserves:

1. The right, without prejudice to paragraph 3 of this Annex, to maintain existing requirements that transfers from Chile of proceeds from the sale of all or any part of an investment of an investor of Korea or from the partial or complete liquidation of the investment may not take place until a period not to exceed:
 - (a) in the case of an investment made pursuant to Decree Law 600 Foreign Investment Statute (Decreto Ley 600, Estatuto de la Inversion Extranjera), one year has elapsed from the date of transfer to Chile; or
 - (b) in the case of an investment made pursuant to Law 18657 Foreign Capital Investment Fund Law (Ley 18.657, Ley Sobre Fondo de Inversiones de Capitales Extranjeros), five years have elapsed from the date of transfer to Chile;
2. The right to adopt measures, consistent with this Annex, establishing future special voluntary investment programs in addition to the general regime for foreign investment in Chile, except that any such measures may restrict transfers from Chile of proceeds from the sale of all or any part of an investment of an investor of Korea or from the partial or complete liquidation of the investment for a period not to exceed five years from the date of transfer to Chile; and
3. The right of the Central Bank of Chile to maintain or adopt measures in conformity with the Constitutional Organic Law of the Central Bank of Chile “Ley Orgánica Constitucional del Banco Central de Chile, Ley 18.840” (hereinafter, Law 18.840) or other legislation, in order to ensure currency stability and the normal operation of domestic and foreign payments. For this purpose, the Central Bank of Chile is empowered to regulate the supply of money and credit in circulation and international credit and foreign exchange operations. The Central Bank of Chile is empowered as well to issue regulations governing monetary, credit, financial, and foreign exchange matters. Such measures include, *inter alia*, the establishment of restrictions or limitations on current payments and transfers (capital movements) to or from Chile, as well as transactions related to them, such as requiring that deposits, investments or credits from or to a foreign country, be subject to a reserve requirement (“encaje”).

Notwithstanding the above, the reserve requirement that the Central Bank of Chile can apply pursuant to Article 49 No. 2 of Law 18.840, shall not exceed 30 per cent of the amount transferred and shall not be imposed for a period which exceeds two years.

Annex 10.20

1. An investor of a Party, on its own behalf or on behalf of an enterprise, may only make a claim under Section C of this Chapter, in relation to investments made and materialized in accordance with the laws and regulations of the other Party.
2. Both Parties shall negotiate the coverage of Section C of this Chapter, as well as the modification of any other Articles in Section C they deem appropriate, taking into account the outcome of bilateral, regional or multilateral negotiations that address relevant issues, no later than one year after the entry into force of this Agreement.

Annex 10.41.2
Service of Documents

Chile

The place for the delivery of notice and other documents under Section C for Chile is:

Dirección de Asuntos Jurídicos del Ministerio de Relaciones Exteriores de la
República de Chile
Morandé 441
Santiago, Chile

Korea

The place for the delivery of notice and other documents under Section C for Korea is:

Office of International Legal Affairs, Ministry of Justice of the
Republic of Korea
Government Complex, Kwacheon
Korea

Annex 10.41.4
Publication of an Award

Chile

Where Chile is the disputing Party, either Chile or a disputing investor that is a party to arbitration may make an award public.

Korea

Where Korea is the disputing Party, either Korea or a disputing investor that is a party to arbitration may make an award public.

Annex 10.43
Composition of the Investment and Cross-Border Trade in Services Committee

For purposes of Article 10.43, the Committee shall comprise:

- (a) in the case of Chile, the General Directorate of International Economic Affairs of the Ministry of Foreign Affairs, or its successor; and
- (b) in the case of Korea, the Director General of International Economic Cooperation Bureau of the Ministry of Finance and Economy, or its successor.

CHAPTER 11

CROSS-BORDER TRADE IN SERVICES

Article 11.1: Definitions

For purposes of this Chapter:

cross-border provision of a service or **cross-border trade in services** means the provision of a service:

- (a) from the territory of a Party into the territory of the other Party,
- (b) in the territory of a Party by a person of that Party to a person of the other Party, or
- (c) by a national of a Party in the territory of the other Party,

but does not include the provision of a service in the territory of a Party by an investment, as defined in Article 10.1, in that territory;

enterprise means an "enterprise" as defined in Article 2.1, and a branch of an enterprise;

enterprise of a Party means an enterprise constituted or organized under the law of a Party and a branch, located in the territory of a Party and carrying out business activities there;

financial services means any service of a financial nature including those defined in paragraph 5(a) on Annex of Financial Services of GATS;

professional services means services, the provision of which requires specialized post-secondary education, or equivalent training or experience, and for which the right to practice is granted or restricted by a Party, but does not include services provided by trades-persons or vessel and aircraft crew members;

quantitative restriction means a non-discriminatory measure that imposes limitations on:

- (a) the number of service providers, whether in the form of a quota, a monopoly or an economic needs test, or by any other quantitative means; or
- (b) the operations of any service provider, whether in the form of a quota or an economic needs test, or by any other quantitative means;

service provider of a Party means a person of a Party that seeks to provide or provides a service; and

specialty air services means aerial mapping, aerial surveying, aerial photography, forest fire management, fire fighting, aerial advertising, flight training, aerial inspection and surveillance, and aerial spraying services.

Article 11.2: Scope and Coverage

1. This Chapter applies to measures adopted or maintained by a Party relating to cross-border trade in services by service providers of the other Party, including measures with respect to:

- (a) the production, distribution, marketing, sale and delivery of a service;
- (b) the purchase or use of, or payment for, a service;
- (c) the access to and use of distribution and transportation systems in connection with the provision of a service;
- (d) the presence in its territory of a service provider of the other Party; and
- (e) the provision of a bond or other form of financial security as a condition for the provision of a service.

2. For purposes of this Chapter, measures adopted or maintained by a Party mean measures adopted or maintained by government or non-governmental bodies in the exercise of any regulatory, administrative or other governmental authority delegated to it by that government.

3. This Chapter does not apply to:

- (a) cross-border trade in financial services;
- (b) air services, including domestic and international air transportation services, whether scheduled or non-scheduled, and related services in support of air services, other than:
 - (i) aircraft repair and maintenance services during which an aircraft is withdrawn from service;
 - (ii) specialty air services;
 - (iii) glider towing, parachute jumping, aerial construction, heli-logging, aerial sightseeing; and
 - (iv) computerized reservation system;
- (c) government procurement by a Party or a state enterprise;
- (d) subsidies or grants provided by a Party or a state enterprise, including government-supported loans, guarantees and insurance; and
- (e) services provided in the exercise of governmental authority such as law enforcement, correctional services, income security or insurance, social security or insurance, social welfare, public education, public training, health, and child care.

4. Notwithstanding subparagraph 3(e), if services provided in the exercise of governmental authority are provided in the territory of a Party such as law enforcement, correctional services, income security or insurance, social security or insurance, social welfare, public education, public training, health, and child care on a commercial basis or in competition with one or more service providers, such services shall be covered by the provisions of this Chapter.

5. Nothing in this Chapter shall be construed to impose any obligation on a Party with respect to a national of the other Party seeking access to its employment market, or employed on a permanent basis in its territory, or to confer any right on that national with respect to such access or employment.

Article 11.3: National Treatment

Each Party shall accord to services and service providers of the other Party treatment no less favorable than that it accords, in like circumstances, to its own services and service providers.

Article 11.4: Local Presence

Neither Party may require a service provider of the other Party to establish or maintain a representative office or any form of enterprise, or to be resident, in its territory as a condition for the cross-border provision of a service.

Article 11.5: Reservations

1. Articles 11.3 and 11.4 do not apply to:
 - (a) any existing non-conforming measure that is maintained by:
 - (i) a Party at the national level, as set out in its Schedule to Annex I; or
 - (ii) a local government;
 - (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
 - (c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 11.3 and 11.4.
2. Articles 11.3 and 11.4 do not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors or activities, as set out in its Schedule to Annex II.

Article 11.6: Quantitative Restrictions

1. Each Party shall set out in its Schedule to Annex III any quantitative restriction that it maintains at the national level.
2. Each Party shall notify the other Party of any quantitative restriction that it adopts, other than at the local government level, after the date of entry into force of this Agreement and shall set out the restriction in its Schedule to Annex III.
3. The Parties shall periodically, but in any event at least every two years, endeavor to negotiate the liberalization or removal of the quantitative restrictions set out in Annex III pursuant to paragraphs 1 and 2.

Article 11.7: Future Liberalization

1. Through future negotiations, to be scheduled every two years by the Commission after the date of entry into force of this Agreement, the Parties will further deepen liberalization with a view to reaching the reduction or elimination of the remaining restrictions scheduled in conformity with Article 11.5, on a mutually advantageous basis and ensuring an overall balance of rights and obligations.
2. If a Party makes any further liberalization, in conformity with Article 11.5 by an agreement with a non-Party, it shall afford adequate opportunity to the other Party to negotiate

treatment granted therein on a mutually advantageous basis and with a view to securing an overall balance of rights and obligations.

Article 11.8: Liberalization of Non-Discriminatory Measures

Each Party shall set out in its Schedule to Annex IV its commitments to liberalize quantitative restrictions, licensing requirements, performance requirements or other non-discriminatory measures.

Article 11.9: Procedures

The Commission shall establish procedures for:

- (a) a Party to notify and include in its relevant Schedule:
 - (i) quantitative restrictions in accordance with Article 11.6.2;
 - (ii) commitments pursuant to Article 11.8; and
 - (iii) amendments of measures referred to in Article 11.5.1(c); and
- (b) consultations on reservations, quantitative restrictions or commitments with a view to further liberalization.

Article 11.10: Licensing and Certification

1. With a view to ensuring that any measure adopted or maintained by a Party related to requirements and procedures to the licensing or certification of nationals of the other Party does not constitute an unnecessary barrier to cross-border trade in services, each Party shall endeavor to ensure that any such measure:

- (a) is based on objective and transparent criteria, such as competence and the ability to provide a service;
- (b) is not more burdensome than necessary to ensure the quality of a service; and
- (c) does not constitute a disguised restriction on the cross-border provision of a service.

2. Where a Party recognizes, unilaterally or by an agreement or arrangement, education, experience, licenses or certifications obtained in the territory of a non-Party, the Party shall afford the other Party an adequate opportunity to demonstrate that education, experience, licenses or certifications obtained in the other Party's territory should also be recognized or to conclude an agreement or arrangement of comparable effect.

3. Annex 11.10 applies to measures adopted or maintained by a Party relating to the licensing or certification of professional service providers.

Article 11.11: Denial of Benefits

Subject to prior notification and consultation in accordance with Articles 17.4 and 19.4, a Party may deny the benefits of this Chapter to a service provider of the other Party where the

Party establishes that the service is being provided by an enterprise that is owned or controlled by persons of a non-Party and that has no substantive business activities in the territory of the other Party.

Annex 11.10

Professional Services

Objectives

1. The objective of this Annex is the establishment of rules to be followed by the Parties in the reduction and gradual elimination, within their territories of the barriers in the rendering of professional services.

Processing of Applications for Licenses and Certifications

2. Each Party shall ensure that its competent authorities, within a reasonable time after the submission by a national of the other Party of an application for a license or certification:

- (a) where the application is complete, make a determination on the application and inform the applicant of that determination; or
- (b) where the application is not complete, inform the applicant, without undue delay, of the status of the application and the additional information that is required under the Party's law.

Development of Professional Standards

3. The Parties shall encourage the relevant bodies in their respective territories to develop mutually acceptable standards and criteria for licensing and certification of professional service providers and to provide recommendations on mutual recognition to the Commission.

4. The standards and criteria referred to in paragraph 3 may be developed with regard to the following matters:

- (a) education - accreditation of schools or academic programs;
- (b) examinations - qualifying examinations for licensing, including alternative methods of assessment such as oral examinations and interviews;
- (c) experience - length and nature of experience required for licensing;
- (d) conduct and ethics - standards of professional conduct and the nature of disciplinary action for non-conformity with those standards;
- (e) professional development and re-certification - continuing education and ongoing requirements to maintain professional certification;
- (f) scope of practice - extent of, or limitations on, permissible activities;
- (g) local knowledge - requirements for knowledge of such matters as local laws, regulations, language, geography or climate; and
- (h) consumer protection - alternatives to residency requirements, including bonding, professional liability insurance and client restitution funds, to provide for the protection of consumers.

5. Upon receipt of a recommendation referred to in paragraph 3, the Commission shall review the recommendation within a reasonable time to determine whether it is consistent with this Agreement. Based on the Commission's review, each Party shall encourage its respective

competent authorities, where appropriate, to implement the recommendation within a mutually agreed time.

Temporary Licensing

6. Where the Parties agree, each Party shall encourage the relevant bodies in its territory to develop procedures for the temporary licensing of professional service providers of the other Party.

Review

7. The Commission shall periodically, at least once every three years, review the implementation of this Section.

CHAPTER 12

TELECOMMUNICATIONS

Article 12.1: Definitions

For purposes of this Chapter:

authorized equipment means terminal or other equipment that has been approved for attachment to the public telecommunications transport network in accordance with the conformity assessment procedures of a Party;

conformity assessment procedures means “conformity assessment procedures” as defined in Article 9.1 and includes the procedures established in Annex 12.1;

enhanced or value-added services means telecommunications services employing computer processing applications that:

- (a) act on the format, content, code, protocol or similar aspects of a customer's transmitted information;
- (b) provide a customer with additional, different or restructured information; or
- (c) involve customer interaction with stored information;

intracorporate communications means telecommunications through which an enterprise communicates:

- (a) internally or with or among its subsidiaries, branches or affiliates, as defined by each Party, or
 - (b) on a non-commercial basis with other persons that are fundamental to the economic activity of the enterprise and that have a continuing contractual relationship with it,
- but does not include telecommunications services provided to persons other than those described herein;

monopoly means an entity, including a consortium or government agency, that in any relevant market in the territory of a Party is maintained or designated as the sole provider of a public telecommunication transport network or service;

network termination point means the final demarcation of the public telecommunications transport network at the customer's premises;

non-discriminatory means on terms and conditions no less favorable than those accorded to any other customer, user or potential customer or user of like public telecommunications transport networks or services or enhanced or value added services in like circumstances;

private network means a telecommunications transport network that is used exclusively for intracorporate communications or among pre-defined persons;

protocol means a set of rules and formats that govern the exchange of information between two peer entities for purposes of transferring signaling and/or data information;

public telecommunications transport network means public telecommunications infrastructure that permits telecommunications between defined network termination points;

public telecommunications transport networks or services means public telecommunications transport networks or public telecommunications transport services;

public telecommunications transport service means any telecommunications transport service required by a Party, explicitly or in effect, to be offered to the public generally, including telegraph, telephone, telex and data transmission, that typically involves the real-time transmission of customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information;

standard means a document, approved by a recognized body, that provides, for common and repeated use, rules, guidelines or characteristics for goods or related processes and production methods, or for services or related operating methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a good, process, or production or operating method;

telecommunications means the transmission and reception of signals by any electromagnetic means;

technical regulation means a document which lays down goods' characteristics or their related processes and production methods, or services' characteristics or their related operating methods, including the applicable administrative provisions, with which compliance is mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a good, process, or production or operating method;

telecommunications service means a service provided by means of the transmission and reception of signals by any electromagnetic means, but does not mean the cable, broadcast or other electromagnetic distribution of radio or television programming to the public generally; and

terminal equipment means any digital or analog device capable of processing, receiving, switching, signaling or transmitting signals by electromagnetic means and that is connected by radio or wire to a public telecommunications transport network at a termination point.

Article 12.2: Scope and Coverage

1. This Chapter applies to:
 - (a) measures adopted or maintained by a Party relating to access to and use of public telecommunications transport networks or services by persons of the other Party, including access and use by such persons operating private networks;

- (b) measures adopted or maintained by a Party relating to the provision of enhanced or value-added services by persons of the other Party in the territory, or across the borders, of a Party; and
- (c) standards-related measures relating to attachment of terminal or other equipment to public telecommunications transport networks.²

2. Except to ensure that persons operating broadcast stations and cable systems have continued access to and use of public telecommunications transport networks and services, this Chapter shall not apply to any measure adopted or maintained by a Party relating to broadcast or cable distribution of radio or television programming.

3. Nothing in this Chapter shall be construed to:

- (a) require a Party to authorize a person of the other Party to establish, construct, acquire, lease, operate or provide telecommunications transport networks or telecommunications transport services;
- (b) require a Party, or require a Party to compel any person, to establish, construct, acquire, lease, operate or provide telecommunications transport networks or telecommunications transport services not offered to the public generally;
- (c) prevent a Party from prohibiting persons operating private networks from using their networks to provide public telecommunications transport networks or services to third persons; or
- (d) require a Party to compel any person engaged in the broadcast or cable distribution of radio or television programming to make available its cable or broadcast facilities as a public telecommunications transport network.

Article 12.3: Access to and Use of Public Telecommunications Transport Networks and Services

1. Each Party shall ensure that persons of the other Party have access to and use of any public telecommunications transport network or service, including private leased circuits, offered in its territory or across its borders for the conduct of their business, on reasonable and non-discriminatory terms and conditions, including as those set out in paragraphs 2 through 8.

2. Subject to paragraphs 6 and 7, each Party shall ensure that persons of the other Party are permitted to:

- (a) purchase or lease, and attach terminal or other equipment that interfaces with the public telecommunications transport network;
- (b) interconnect private leased or owned circuits with public telecommunications transport networks in the territory, or across the borders, of that Party, including those for use in providing dial-up access to and from their customers or users, or with circuits leased or owned by another person on terms and conditions mutually agreed by those persons;
- (c) perform switching, signaling and processing functions; and

² For equipment that is not connected to the public telecommunications transport network or not referred to in this Agreement, the Parties shall abide by the standard-related provisions of Chapter 9.

- (d) use operating protocols of their choice.
3. Each Party shall ensure that the pricing of public telecommunications transport services reflects economic costs directly related to providing the services.
4. Each Party shall ensure that persons of the other Party may use public telecommunications transport networks or services for the movement of information in its territory or across its borders, including for intracorporate communications, and for access to information contained in data bases or otherwise stored in machine-readable form in the territory of the other Party.
5. Further to Article 20.1, nothing in this Chapter shall be construed to prevent a Party from adopting or enforcing any measure necessary to:
- (a) ensure the security and confidentiality of messages; or
 - (b) protect the privacy of subscribers to public telecommunications transport networks or services.
6. Each Party shall ensure that, further to Article 12.5, no condition is imposed on access to and use of public telecommunications transport networks or services, other than that necessary to:
- (a) safeguard the public service responsibilities of providers of public telecommunications transport networks or services, in particular their ability to make their networks or services available to the public generally; or
 - (b) protect the technical integrity of public telecommunications transport networks or services.
7. Provided that conditions for access to and use of public telecommunications transport networks or services satisfy the criteria set out in paragraph 6, such conditions may include:
- (a) a restriction on resale or shared use of such services;
 - (b) a requirement to use specified technical interfaces, including interface protocols, for interconnection with such networks or services;
 - (c) a restriction on interconnection of private leased or owned circuits with such networks or services or with circuits leased or owned by another person; and
 - (d) a licensing, permit, registration or notification procedure which, if adopted or maintained, is transparent and applications filed thereunder are processed expeditiously.

Article 12.4: Conditions for the Provision of Enhanced or Value-Added Services

1. Each Party shall ensure that:
- (a) any licensing, permit, registration or notification procedure that it adopts or maintains relating to the provision of enhanced or value-added services is transparent and non-discriminatory, and that applications filed thereunder are processed expeditiously; and
 - (b) information required under such procedures is limited to that necessary to demonstrate that the applicant has the financial solvency to begin providing services

or to assess conformity of the applicant's terminal or other equipment with the applicable standards or technical regulations of the Party.

2. Neither Party may require a person providing enhanced or value-added services to:
 - (a) provide those services to the public generally;
 - (b) cost-justify its rates;
 - (c) file a tariff;
 - (d) interconnect its networks with any particular customer or network; or
 - (e) conform with any particular standard or technical regulation for interconnection other than for interconnection to a public telecommunications transport network.
3. Notwithstanding paragraph 2(c), a Party may require the filing of a tariff by:
 - (a) such a provider to remedy a practice of that provider that the Party has found in a particular case to be anti-competitive under its law; or
 - (b) a monopoly to which Article 12.6 applies.

Article 12.5: Standards-Related Measures

1. Further to the TBT Agreement, each Party shall ensure that its standards-related measures relating to the attachment of terminal or other equipment to the public telecommunications transport networks, including those measures relating to the use of testing and measuring equipment for conformity assessment procedures, are adopted or maintained only to the extent necessary to:
 - (a) prevent technical damage to public telecommunications transport networks;
 - (b) prevent technical interference with, or degradation of, public telecommunications transport services;
 - (c) prevent electromagnetic interference, and ensure compatibility, with other uses of the electromagnetic spectrum;
 - (d) prevent billing equipment malfunction;
 - (e) ensure users' safety and access to public telecommunications transport networks or services;
 - (f) ensure the electrical safety of communication equipment; or
 - (g) facilitate the efficient utilization of radio spectrum resources.
2. A Party may require, before an unauthorized terminal or other equipment may be marketed, an approval for the attachment to the public telecommunications transport network, provided that the criteria for that approval are consistent with paragraph 1.
3. Each Party shall ensure that the network termination points for its public telecommunications transport networks are defined on a reasonable and transparent basis.
4. Neither Party may require separate authorization for equipment that is connected on the customer's side of authorized equipment that serves as a protective device fulfilling the criteria of paragraph 1.
5. Further to the TBT Agreement, each Party shall:

- (a) ensure that its conformity assessment procedures are transparent and non-discriminatory and that applications filed thereunder are processed expeditiously;
- (b) permit any technically qualified entity to perform the testing required under the Party's conformity assessment procedures for terminal or other equipment to be attached to the public telecommunications transport network, subject to the Party's right to review the accuracy and completeness of the test results; and
- (c) ensure that any measure that it adopts or maintains requiring persons to be authorized to act as agents for suppliers of telecommunications equipment before the Party's relevant conformity assessment bodies is non-discriminatory.

6. No later than one year after the date of entry into force of this Agreement, each Party shall adopt, as part of its conformity assessment procedures, provisions necessary to accept the test results from laboratories or testing facilities in the territory of the other Party for tests performed in accordance with the accepting Party's standards-related measures and procedures. For the detailed procedures and methods for mutual recognition of testing laboratories and mutual acceptance of test reports, follows the procedures and methods as prescribed in the "Asia-Pacific Economic Cooperation (APEC) Mutual Recognition Arrangement for Conformity Assessment of Telecommunications Equipment (adopted on May 8, 1998)" shall be taken into consideration by the Telecommunication Committee.

7. The Parties hereby establish a Committee on Telecommunications Standards, comprising representatives of each Party.

8. The Committee on Telecommunications Standards shall perform the functions set out in Annex 12.5.8.

Article 12.6: Monopolies

1. Where a Party maintains or designates a monopoly to provide public telecommunications transport networks or services, and the monopoly, directly or through an affiliate, competes in the provision of enhanced or value-added services or other telecommunications-related services or telecommunications-related goods, the Party shall ensure that the monopoly does not use its monopoly position to engage in anti-competitive conduct in those markets, either directly or through its dealings with its affiliates, in such a manner as to affect adversely a person of the other Party. Such conduct may include cross-subsidization, predatory conduct and the discriminatory provision of access to public telecommunications transport networks or services.

2. To prevent such anti-competitive conduct, each Party shall adopt or maintain, as stated in paragraph 1, effective measures, such as:

- (a) accounting requirements;
- (b) requirements for structural separation;
- (c) rules to ensure that the monopoly accords its competitors access to and use of its public telecommunications transport networks or services on terms and conditions no less favorable than those it accords to itself or its affiliates; and
- (d) rules to ensure the timely disclosure of technical changes to public telecommunications transport networks and their interfaces.

Article 12.7: Transparency

Further to Article 17.3, each Party shall make publicly available its measures relating to access to and use of public telecommunications transport networks or services, including measures relating to:

- (a) tariffs and other terms and conditions of service;
- (b) specifications of technical interfaces with the networks or services;
- (c) information on bodies responsible for the preparation and adoption of standards-related measures affecting such access and use;
- (d) conditions applying to attachment of terminal or other equipment to the networks; and
- (e) notification, permit, registration, or licensing or concession requirements.

Article 12.8: Relation to Other Chapters

In the event of any inconsistency between this Chapter and another Chapter in this Agreement, this Chapter shall prevail to the extent of the inconsistency.

Article 12.9: Relation to International Organizations and Agreements

The Parties recognize the importance of international standards for global compatibility and interoperability of telecommunication networks or services and undertake to promote those standards through the work of relevant international bodies, including the International Telecommunication Union and the International Organization for Standardization.

Article 12.10: Technical Cooperation and Other Consultations

1. To encourage the development of interoperable telecommunications transport services infrastructure, the Parties shall cooperate in the exchange of technical information, the development of government-to-government training programs and other related activities. In implementing this obligation, the Parties shall give special emphasis to existing exchange programs.

2. The Parties shall consult with a view to determining the feasibility of further liberalizing trade in all telecommunications services, including public telecommunications transport networks and services.

Annex 12.1

Conformity Assessment Procedures

For Chile:

1. The competent institution responsible for the adoption of conformity assessment procedures is the Undersecretary of Telecommunications, Ministry of Transport and Telecommunications, or its successor.
2. The existing measures are the following:
 - (a) Law 18.168, Official Gazette, October 2, 1982, General Law of Telecommunications ("Ley 18.168, Diario Oficial, octubre 2, 1982, Ley General de Telecomunicaciones")
 - (b) Supreme Decree 220 of the Ministry of Transport and Telecommunications, Official Gazette, January 8, 1981
 - (c) Regulation on the Homologation of Telephone Equipment (Decreto 220 de Ministerio de Transportes y Telecomunicaciones, Diario Oficial, enero 8, 1981, "Reglamento de Homologación de Aparatos Telefónicos")

For Korea:

1. The competent institution responsible for the adoption of conformity assessment procedures is the Ministry of Information and Communication, or its successor.
2. The existing measures are the following:
 - (a) Areas of Type Approval
 - Telecommunications Basic Act (Act No. 5454, Dec. 13, 1997)
 - Enforcement Decree of Telecommunications Basic Act (Presidential Decree No. 15282, Feb. 22, 1997)
 - Enforcement Regulations of Telecommunications Basic Act (Ordinance of the Ministry of Information and Communication No. 64, Feb. 26, 1999): definitions of the type approval items, and application and process procedures
 - Regulations on the Technical Standards of Telecommunications Facilities (Ordinance of the Ministry of Information and Communication No. 58, Dec. 1, 1998)
 - Terminal-installment Technical Regulations (Ministry of Information and Communication Announcement No. 1998-18, Feb. 21, 1998): definitions of the technical regulations of terminal-installment equipment
 - (b) Areas of Type Verification and Type Registration of Wireless Equipment
 - Radio Waves Act (Act No. 5637, Jan. 18, 1999)
 - Enforcement Decree of the Radio Waves Act (Presidential Decree No. 16158, March 3, 1999)
 - Enforcement Regulations of the Radio Waves Act (Ordinance of the

- Ministry of Information and Communication No. 53, July 31, 1998)
- Confirmation Regulations on Type Verification, Type Registration and Technical Standard Certification for Wireless Facility (Ordinance of the Ministry of Information and Communication No. 52, July 16, 1998): definitions of the object of verification or registration, and the application and process procedure
 - Regulations on Wireless Facilities (Ordinance of the Ministry of Information and Communication No. 45, Jan. 31, 1998): definitions of the technical regulations

(c) Areas of Electromagnetic Compatibility Registration

- Radio Waves Act (Act No. 5637, Jan.18, 1999)
 - Regulations on Electromagnetic Compatibility Registration (Act No. 39, May 8, 1997): definitions of the registration items, application and process procedures, and relevant technical regulations

Annex 12.5.8
Committee on Telecommunications Standards

1. The Committee on Telecommunications Standards, established under Article 12.5.7, shall comprise representatives of each Party.
2. The Committee shall, within six months of the date of entry into force of this Agreement, develop a work program, including a timetable, for making compatible to the greatest extent possible, the standards-related measures of the Parties for authorized equipment as defined in this Chapter.
3. The Committee may address other appropriate standards-related matters regarding telecommunications equipment or services and such other matters as it considers appropriate.
4. The Committee shall take into account relevant work carried out by the Parties in other fora, and that of non-governmental standardizing bodies.

CHAPTER 13

TEMPORARY ENTRY FOR BUSINESS PERSONS

Article 13.1: Definitions

For purposes of this Chapter:

business person means a citizen of a Party who is engaged in trade in goods, the provision of services or the conduct of investment activities; and

temporary entry means entry into the territory of a Party by a business person of the other Party without the intent to establish permanent residence.

Article 13.2: General Principles

1. Further to Article 1.2, this Chapter reflects the preferential trading relationship between the Parties, the desirability of facilitating temporary entry on a reciprocal basis and of establishing transparent criteria and procedures for temporary entry, and the need to ensure border security and to protect the domestic labour force and permanent employment in their respective territories.

2. The Parties reconfirm their voluntary commitments established in the APEC Business Travel Card “Operating Framework”. This recognition shall be understood to be under the APEC general principles.

Article 13.3: General Obligations

1. Each Party shall apply its measures relating to the provisions of this Chapter in accordance with Article 13.2 and, in particular, shall apply expeditiously those measures so as to avoid unduly impairing or delaying trade in goods or services or conduct of investment activities under this Agreement.

2. The Parties shall endeavour to develop and adopt common criteria, definitions and interpretations for the implementation of this Chapter.

Article 13.4: Grant of Temporary Entry

1. In accordance with this Chapter and subject to the provisions of Annex 13.4 and Annex 13.4.1, each Party shall grant temporary entry to business persons who are otherwise qualified for entry under applicable measures relating to public health and safety and national security.

2. A Party may refuse to issue an immigration document authorizing employment to a business person where the temporary entry of that person might affect adversely:

- (a) the settlement of any labour dispute that is in progress at the place or intended place of employment; or
 - (b) the employment of any person who is involved in such dispute.
- 3. When a Party refuses pursuant to paragraph 2 to issue an immigration document authorizing employment, it shall:
 - (a) inform in writing the business person of the reasons for the refusal; and
 - (b) promptly notify the other Party in writing of the reasons for the refusal.
- 4. Each Party shall limit any fees for processing applications for temporary entry of business persons to the approximate cost of services rendered.

Article 13.5: Provision of Information

- 1. Further to Article 17.3, each Party shall:
 - (a) provide to the other Party such materials as will enable the latter Party to become acquainted with its own measures relating to this Chapter; and
 - (b) no later than six months after the date of entry into force of this Agreement, prepare, publish and make available in its own territory, and in the territory of the other Party, explanatory material in a consolidated document regarding the requirements for temporary entry under this Chapter in such a manner as will enable business persons of the other Party to become acquainted with them.
- 2. Each Party shall collect and maintain, and make available to the other Party in accordance with its domestic law, data regarding the granting of temporary entry under this Chapter to business persons of the other Party who have been issued immigration documentation, including data specific to each occupation, profession or activity.

Article 13.6: Working Group

The Parties hereby establish a Temporary Entry Working Group, comprising representatives of each Party, including immigration officials, to consider the implementation and administration of this Chapter and any measures of mutual interest.

Article 13.7: Dispute Settlement

- 1. A Party may not initiate proceedings under Article 19.6 regarding a refusal to grant temporary entry under this Chapter or a particular case arising under Article 13.2 unless:
 - (a) the matter involves a pattern of practice; and
 - (b) the business person has exhausted the available administrative remedies regarding the particular matter.

2. The remedies referred to in subparagraph 1(b) shall be deemed to be exhausted if a final determination in the matter has not been issued by the competent authority within six months of the institution of an administrative proceeding, and the failure to issue a determination is not attributable to delay caused by the business person.

Article 13.8: Relation to Other Chapters

Except for this Chapter, Chapters 1, 2, 18, 19 and 21 and Articles 17.2, 17.3, 17.4 and 17.6, no provision of this Agreement shall impose any obligation on a Party regarding its immigration measures.

Annex 13.4

Temporary Entry for Business Persons

Section I - Business Visitors

1. Each Party shall grant temporary entry to a business person seeking to engage in a business activity set out in Appendix 13.4.I.1, without requiring that person to obtain an employment authorization, provided that the business person otherwise complies with existing immigration measures applicable to temporary entry, on presentation of:
 - (a) proof of citizenship of a Party;
 - (b) documentation demonstrating that the business person will be so engaged and describing the purpose of entry; and
 - (c) evidence demonstrating that the proposed business activity is international in scope and the business person is not seeking to enter the local labour market.
2. Each Party shall provide that a business person may satisfy the requirements of subparagraph 1(c) by demonstrating that:
 - (a) the primary source of remuneration for the proposed business activity is outside the territory of the Party granting temporary entry; and
 - (b) the business person's principal place of business and the actual place of accrual of profits, at least, predominantly, remain outside such a territory.
3. Each Party shall grant temporary entry to a business person seeking to engage in a business activity other than those set out in Appendix 13.4.I.1, without requiring that person to obtain an employment authorization, on a basis no less favourable than that provided under the existing provisions of the measures set out in Appendix 13.4.I.3, provided that the business person otherwise complies with existing immigration measures applicable to temporary entry.
4. Neither Party may:
 - (a) as a condition for temporary entry under paragraph 1 or 3, require prior approval procedures, petitions, labour certification tests or other procedures of similar effect; or
 - (b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1 or 3.
5. Notwithstanding paragraph 4, a Party may require a business person seeking temporary entry under this Section to obtain a visa or its equivalent in accordance with its domestic immigration law prior to entry. Before imposing the visa requirement, the Party shall consult with the other Party with a view to avoiding the imposition of the requirement. With respect to an existing visa requirement, a Party shall consult, upon request, with the other Party with a view to its removal.

Section II - Traders and Investors

1. Each Party shall grant temporary entry and provide confirming documentation to a business person seeking to:

- (a) carry on substantial trade in goods or services principally between the territory of the Party of which the business person is a citizen and the territory of the other Party into which entry is sought, or
- (b) establish, develop, administer or provide advice or key technical services to the operation of an investment to which the business person or the business person's enterprise has committed, or is in the process of committing, a substantial amount of capital,

in a capacity that is supervisory or executive, or involves essential skills, provided that the business person otherwise complies with existing immigration measures applicable to temporary entry.

2. Neither Party may:

- (a) as a condition for temporary entry under paragraph 1, require labour certification tests or other procedures of similar effect; or
- (b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1.

3. Notwithstanding paragraph 2, a Party may require a business person seeking temporary entry under this Section to obtain a visa or its equivalent in accordance with its domestic immigration law prior to entry. Before imposing the visa requirement, the Party shall consult with the other Party with a view to avoiding the imposition of the requirement. With respect to an existing visa requirement, a Party shall consult, upon request, with the other Party with a view to its removal.

Section III - Intra-Company Transferees

1. Each Party shall grant temporary entry and provide confirming documentation to a business person employed by an enterprise who seeks to render services to that enterprise of a Party or a subsidiary or affiliate thereof, in a capacity that is managerial, executive or involves specialised knowledge, provided that the business person otherwise complies with existing immigration measures applicable to temporary entry. A Party may require the business person to have been employed continuously by the enterprise for one year within the three-year period immediately preceding the date of the application for admission.

2. Neither Party may:

- (a) as a condition for temporary entry under paragraph 1, require labour certification tests or other procedures of similar effect; or
- (b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1.

3. Notwithstanding paragraph 2, a Party may require a business person seeking temporary entry under this Section to obtain a visa or its equivalent in accordance with its domestic immigration law prior to entry. Before imposing visa requirement, the Party shall consult with the other Party with a view to avoiding the imposition of the requirement. With respect to an

existing visa requirement, a Party shall consult, upon request, with the other Party with a view to its removal.

Annex 13.4.1

In the case of Chile:

1. Business persons who enter Chile under any of the categories set out in Annex 13.4 shall be deemed to be engaged in activities which are in the country's interest.
2. Business persons who enter Chile under any of the categories set out in Annex 13.4 are issued with a temporary resident visa for a period up to one year. Such a temporary visa may be extended for subsequent periods, provided the conditions on which it is based remain in effect, without requiring that person to apply for permanent residence.
3. Business persons who enter Chile may also obtain an identity card for foreigners.
4. Business persons who enter Chile under any of the categories set out in Annex 13.4 may freely enter and leave Chile without re-entry permission during the validity of their visas on the basis of reciprocity.

In the case of Korea:

1. Business visitors who enter Korea under Section I of Annex 13.4 are issued with a short-term business visa (C-2) for a period of up to six months. A change of visa status to that of an intra-company transferee visa (D-7), investment visa (D-8) or trade management visa (D-9), may be permitted, if the activities of the business visitors satisfy the conditions under Sections II and III of Annex 13.4.
2. Investors and traders who enter Korea under Section II of Annex 13.4 are issued with an investment visa (D-8) or a trade and management visa (D-9), respectively, for a period of up to one year. These visas may be extended for subsequent periods provided the conditions on which they are based remain in effect.
3. Intra-company transferees who enter Korea under Section III of Annex 13.4 are issued with an intra-company transferee visa (D-7) for a period of up to one year. This visa may be extended for subsequent periods provided the conditions on which it is based remain in effect.
4. Business persons who enter Korea under any of the categories set out in Annex 13.4 may freely enter and leave Korea without re-entry permission during the validity of their visa on the basis of the reciprocity.
5. Business persons who intend to stay over 90 days in Korea shall register the aliens registration at the competent immigration office.

Appendix 13.4.I.1 Business Visitors

1. For purposes of this Appendix, “**territory of the other Party**” means the territory of the Party other than the territory of the Party into which temporary entry is sought.
2. Business activities referred to in Section I.1 of Annex 13.4 are:

Research and Design

- Technical, scientific and statistical researchers conducting research for an enterprise located in the territory of the other Party.

Growth, Manufacture and Production

- Purchasing and production management personnel conducting commercial transactions for an enterprise located in the territory of the other Party.

Marketing

- Market researchers and analysts conducting analysis or research for an enterprise located in the territory of the other Party.
- Trade fair and promotional personnel attending a trade convention.

Sales

- Sales representatives and agents taking orders or negotiating contracts for goods or services for an enterprise located in the territory of the other Party but not delivering goods or providing services.
- Buyers purchasing for an enterprise located in the territory of the other Party.

Distribution

- Customs brokers providing consulting services regarding the facilitation of the import or export of goods.

After-Sales Service

- Installers, repair and maintenance personnel, and supervisors, possessing specialised knowledge essential to a seller's contractual obligation, performing services or training workers to perform services, pursuant to a warranty or other service contract incidental to the sale of commercial or industrial equipment or machinery, including computer software, purchased from an enterprise located outside the territory of the Party into which temporary entry is sought, during the life of the warranty or service agreement.

General Service

- Consultants engaging in a business activity at the cross-border services provision level.
- Management and supervisory personnel engaging in a commercial transaction for an enterprise located in the territory of the other Party.

- Financial services personnel (insurers, bankers or investment brokers) engaging in commercial transactions for an enterprise located in the territory of the other Party.
- Public relations and advertising personnel consulting with business associates, or attending or participating in conventions.
- Tourism personnel (tour and travel agents, tour guides or tour operators) attending or participating in conventions or conducting a tour that has begun in the territory of the other Party.
- Translators or interpreters performing services as employees of an enterprise located in the territory of the other Party.

Appendix 13.4.I.3

Existing Immigration Measures

1. In the case of Chile, Title I, paragraph 6 of Decree Law 1094, Official Gazette, July 19, 1975, Immigration Law (“Decreto Ley 1094, Diario Oficial, julio 19, 1975, Ley de Extranjería”), and Title III of Immigration Regulation (“Decreto Supremo 597 del Ministerio del Interior, Diario Oficial noviembre 24, 1984, Reglamento de Extranjería”).
2. In the case of Korea, Immigration Law Article 7 and Article 8 (amended February 5, 1999), Immigration Law Enforcement Ordinance Article 7, Article 11 and Article 12 (amended November 27, 1999), Immigration Law Enforcement Regulations Article 8, Article 9, Article 10, Article 13, Article 18, Article 71 and Article 76 (amended December 2, 1999), Visa Issuance Procedure for Short-Term Business (C-2), Short-Term Visitors (C-3).

CHAPTER 14 COMPETITION

Article 14.1: Definitions

For the purpose of this Chapter:

competition laws includes:

- (a) for Chile, Decree Law N° 211 of 1973 and Law N° 19.610 of 1999 and their implementing regulations or amendments;
- (b) for Korea, the Monopoly Regulation and Fair Trade Act (Law no. 3320, 1980) and its implementing regulations and amendments; and
- (c) any changes that the legislations in subparagraphs (a) and (b) may undergo after the conclusion of this Agreement;

competition authority means:

- (a) for Chile, the “Fiscalía Nacional Económica”; and
- (b) for Korea, the Fair Trade Commission; and

enforcement activity means any application of competition laws by way of investigation or proceeding conducted by the competition authority of a Party, which may result in the imposition of penalties or remedies.

Article 14.2: Objectives

1. The Parties undertake to apply their respective competition laws in a manner consistent with this Chapter so as to avoid that the benefits of the liberalization process in goods and services may be diminished or cancelled out by anti-competitive business conduct. To this end, the Parties agree to cooperate and coordinate between their competition authorities under the provisions of this Chapter.

2. With a view to preventing distortions or restrictions on competition which may affect trade in goods or services between them, the Parties shall give particular attention to anti-competitive agreements, concerted practices and abusive behavior resulting from single or joint dominant positions.

3. The Parties agree to cooperate and coordinate between themselves for the implementation of competition laws. This cooperation includes notification, consultation, exchange of non-confidential information and technical assistance. The Parties acknowledge the importance of embracing principles on competition that would be accepted by both Parties in multilateral fora, including the WTO.

Article 14.3: Notifications

1. Each competition authority shall notify the competition authority of the other Party of an enforcement activity if it:
 - (a) is liable to substantially affect the other Party's important interests;
 - (b) relates to restrictions on competition which are liable to have a direct and substantial effect in the territory of the other Party; or
 - (c) concerns anti-competitive acts taking place principally in the territory of the other Party.
2. Provided that it is not contrary to the Parties' competition laws and does not affect any investigation being carried out, notification shall be given at an early stage of the procedure. The opinions received may be taken into consideration by the other competition authority when taking decisions.
3. The notifications given under paragraph 1 should be detailed enough to permit an evaluation in the light of the interests of the other Party.
4. The Parties undertake to exert their best efforts to ensure that notifications are made in the circumstances set out above, taking into account the administrative resources available to them.

Article 14.4: Coordination of Enforcement Activities

The competition authority of a Party may notify the other Party's competition authority of its intention to coordinate enforcement activities with respect to a specific case. This coordination shall not prevent the Parties from taking autonomous decisions.

Article 14.5: Consultations when the Important Interests of a Party are Adversely Affected in the Territory of the Other Party

1. Each Party shall, in accordance with its laws, take into consideration, as necessary, the important interests of the other Party in the course of its enforcement activities. If the competition authority of a Party considers that an investigation or proceeding being conducted by the competition authority of the other Party may adversely affect such a Party's important interests, it may transmit its views on the matter to, or request consultation with, the other competition authority. Without prejudice to the continuation of any action under its competition laws and to its full freedom of ultimate decision, the competition authority so addressed should give full and sympathetic consideration to the views expressed by the requesting competition authority.
2. The competition authority of a Party that considers that its interests are being substantially and adversely affected by anti-competitive practices of whatever origin that are or have been engaged in by one or more enterprises located in the other Party may request consultations with the competition authority of that Party. Such consultations are without prejudice to the full freedom of ultimate decision of the competition authority concerned. A competition authority so

consulted may take whatever corrective measures under its competition laws, which it deems appropriate, consistent with its own domestic law, and without prejudice to its full enforcement discretion.

Article 14.6: Exchange of Information and Confidentiality

1. With a view to facilitating the effective application of their respective competition laws, the competition authorities may exchange non-confidential information.
2. For the purpose of improving transparency, and without prejudice to the rules and standards of confidentiality applicable in each Party, the Parties hereby undertake to exchange information regarding sanctions and remedies applied in the cases that, according to the competition authority concerned, are significantly affecting important interests of the other Party and to provide the grounds on which those actions were taken, when requested by the competition authority of the other Party.
3. All exchange of information shall be subject to the standards of confidentiality applicable in each Party. Confidential information whose dissemination is expressly prohibited or which, if disseminated, could adversely affect the interest of the Parties, shall not be provided without the express consent of the source of the information.
4. Each competition authority shall maintain the confidentiality of any information provided to it in confidence by the other competition authority, and shall not disclose such information to any entity that is not authorised by the competition authority that supplied the information.
5. Notwithstanding the above provisions of this Article, where the laws of the Parties so provides, confidential information may be provided to their respective courts of justice, provided that confidentiality is maintained by the courts.

Article 14.7: Technical Assistance

The Parties may provide each other with technical assistance in order to take advantage of their respective experiences and to strengthen the implementation of their competition laws and policies.

Article 14.8: Public Enterprises and Enterprises Entrusted with Special or Exclusive Rights, including Designated Monopolies

1. Nothing in this Chapter prevents the Parties from designating or maintaining public or private monopolies according to their respective laws.
2. With regard to public enterprises and enterprises to which special or exclusive rights have been granted, including designated monopolies, the Commission shall ensure that, following the date of entry into force of this Agreement, such enterprises shall be subject to the rules of

competition, insofar as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them.

Article 14.9: Dispute Settlement

Neither Party may have recourse to dispute settlement procedures under Chapter 19 for any matter arising under this Chapter.